

ORDINANCE NO. R-2016-3 AMENDED

TAX CODE(S) 82-07-014-142.043-027

AN ORDINANCE TO REZONE CERTAIN REAL ESTATE IN THE CITY OF EVANSVILLE, STATE OF INDIANA, MORE COMMONLY KNOWN AS 6801 E. LLOYD EXPRESSWAY.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF EVANSVILLE, INDIANA, AS FOLLOWS, TO WIT:

Section 1: That Ordinance no. G-82-51, being the Municipal Code of the City of Evansville, Indiana, 1982, and more particularly Title XV, Chapter 153, by making certain changes in Atlas 1, which is made part of said section with respect to the following described real estate located in the City of Evansville, Vanderburgh County, State of Indiana:

Parcel 1:

Outlot A in Plaza Court, an Addition lying near the City of Evansville, as per plat thereof, recorded in Plat Book M, page 170, in the office of the Recorder of Vanderburgh County, Indiana.

by changing the zoning classification of the above-described real estate from CO-2 to C-2 w/UDC, and said real estate is hereby so rezoned and reclassified.

Section 2. The Director of the Area Plan Commission of Evansville and Vanderburgh County is hereby authorized and directed, upon the enactment and approval of this ordinance, to cause the change to be made on said Atlas 1 as set out in Section 1 of this Ordinance, and to make notation in ink thereon of reference to the number of this ordinance and the date of final publication of the amendatory ordinance after its passage and approval; however, failing to do so shall not invalidate this Ordinance.

Section 3. This ordinance shall be in full force and effect from and after its passage by the Common Council, its approval by the Mayor, and its publication as required by law, which publication is now ordered.

Section 4. The subject property herein rezoned shall be used and developed only in accordance with the use and development commitment which is incorporated as part of this Petition for Rezoning and recorded in the office of the Recorder of Vanderburgh County, Indiana on MARCH 22, 2016 at Instrument No.: 2016R00007942. No improvement location permits shall be issued unless the proposed use is in compliance with said recorded use and development commitment.

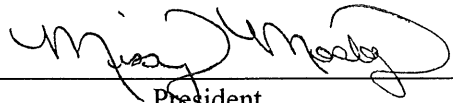
FILED

FEB 25 2016

Anna Winkler
CITY CLERK

Passed by the Common Council of Evansville, Indiana, on this 14 day of March, 2016.

ATTEST:



President

Gaura Windhorst

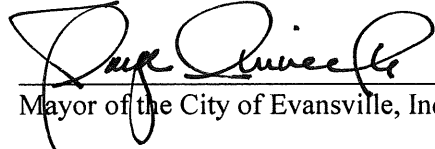
City Clerk

Presented to me, the undersigned, City Clerk of the City of Evansville, Indiana, to the Mayor of said city, the
16 day of March, 2016.

Gaura Windhorst

City Clerk

Having examined the foregoing Ordinance, I do now, as Mayor of the City of Evansville, Indiana, approve said Ordinance, and return same to the City Clerk this 16th day of March, 2016, at 1:00 o'clock pm.



Mayor of the City of Evansville, Indiana

This instrument prepared by: Shannon S. Frank, Attorney, KAHN, DEES, DONOVAN & KAHN, LLP,
501 Main Street, Suite 305, Evansville, Indiana 47708 (Telephone: 812-423-3183).

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.
Shannon S. Frank

USE AND DEVELOPMENT COMMITMENT

WHEREAS, the undersigned, J & K Investments, LLP, an Indiana limited liability partnership, is the Owner of certain real estate situated in the City of Evansville, Vanderburgh County, Indiana, commonly described as 6801 E. Lloyd Expressway, Evansville, Indiana, more particularly described on Exhibit "A", attached hereto and by this reference made a part hereof (the "Real Estate"); and

WHEREAS, the Real Estate is currently classified as a Commercial Office (CO-2) zoning district under the Evansville Zoning Code and is so indicated on the zoning maps maintained by the staff of the Evansville-Vanderburgh County Area Plan Commission; and

WHEREAS, J & K Investments, LLP (the "Petitioner") has requested that the Real Estate be reclassified to zoning district Commercial-2 with a Use and Development Commitment (C-2 w/UDC); and

WHEREAS, Petitioner is desirous of accommodating the concerns of the surrounding property owners by making a written commitment concerning the use and development of the Real Estate pursuant to I.C.36-7-4-1015;

NOW, THEREFORE, in consideration of the foregoing, Petitioner makes the following use and development commitments concerning the use of the Real Estate:

1. Owner shall have the right to change, alter, or adjust the dimensions of any lot contained within the Real Estate, in compliance with local ordinance; provided, however, that Owner shall not subdivide the Real Estate into more than six (6) separate lots.
2. There shall be no access to the Real Estate other than a single entrance for ingress and egress off the Lloyd Expressway. No attempt will be made to obtain access to the Real Estate from Wilson Square Street, Plaza Drive Boulevard or Nathan Court Street and no attempt will be made to provide access from the Real Estate to real estate located east thereof.
3. Each building constructed on the Real Estate shall be constructed in such a manner that all exterior walls of any such building will include construction materials and architectural details that are consistent with and substantially similar to those used for each such building's front elevation. The view of any heating, ventilating or air-conditioning constructed atop any building constructed or erected on the Real Estate shall be obscured by a decorative facade constructed above the roof line of any such building. Any such decorative facade shall be excluded in computing the height of any building on the Real Estate.
4. The buildings constructed on the Real Estate shall be limited to two (2) stories and a maximum height of thirty-five (35) feet.
5. Any building constructed on the Real Estate shall be completed and ready for occupancy within one (1) year after the date of commencement of construction of any such building.

6. All structures constructed or erected on the Real Estate shall be of new construction and no tents, trailers, shacks, barns, garages or any other portable or unattached structures shall be placed or constructed on the Real Estate; provided, however, that storage trailers may be used during the construction of any approved buildings or structures.
7. The use of the Real Estate shall be limited as follows:

All permitted uses allowed in Commercial C-2 zoning classification, namely Use Groups 4, 5, 6, 7, and 8 shall be **PERMITTED** to the Owner and any tenants of the Real Estate; **EXCEPT** that the following uses (**except where modified by provisos**) are **PROHIBITED** as the primary uses on the Real Estate.

USE GROUP 4:

No Prohibitions.

USE GROUP 5:

Child Care Center;
Nursery or Nursery School.

USE GROUP 6:

Sororities and fraternities.

USE GROUP 7:

- (A) Retail stores specializing in the sale or rental of any of the following:

Bakery goods; **provided that a small bakery (as part of a grouping of “boutique” retail stores) shall be permitted;**
Fruits or vegetables; **provided that a small “boutique”-like delicatessen selling fruit and/or vegetables shall be permitted;**
Groceries - limited to stores with a total area of less than 3,000 square feet;
Meal or delicatessen items; **provided that a small delicatessen (as part of a grouping of “boutique” retail stores or as part of a hotel, motel or group home/community residential facility) shall be permitted.**

- (B) Offices for the following businesses and professions:

No Prohibitions.

- (C) The following service uses:

Radio, television, stereo, small appliance repair;
Restaurant and cafeteria - a building or a portion of a building where food is prepared and served for compensation and consumption on the premises (including restaurants with drive-through windows; **provided that a small restaurant or cafeteria (as part of a grouping of “boutique” retail stores or as part of a hotel, motel or group home/community residential facility) shall be permitted.**

USE GROUP 8:

- (A) Retail store specializing in the sale or rental of any of the following:

Automobile new parts, equipment and accessories;
Package liquor stores;
Pawnshop.

- (B) The following service uses:

Business school - a private school or college conducted as a commercial enterprise for teaching business or secretarial skills;
Commercial trade school - a private school conducted as a commercial enterprise for teaching or beauty skills or industrial skills in which machinery is used in the instruction;
Home appliance repair - large;
Laundromats;
Lawnmower repair.

- (C) Department store; **provided that a department store containing an area of no more than 60,000 square feet shall be permitted.**

- (D) Supermarket - retail stores with a total floor area of more than 3,000 square feet specializing in the sale of food and grocery items.

- (E) The following recreational uses:

Arcade;
Bar;
Bowling Alley;
Dance Hall, Meeting Hall, or Party House; **provided that a meeting hall or party house as part of a hotel, motel or group home/community residential facility shall be permitted;**
Night club;
Pool and billiard room;
Tavern and restaurants serving alcoholic beverages; **provided that a tavern or restaurant serving alcoholic beverages as part of a hotel, motel or group home/community residential facility shall be permitted;**
Theater.

- (F) Automotive Service Station - limited to the sale of gasoline, oil products, automobile accessories, and incidental services such as lubricating and minor repair.

- (G) Shopping center; **provided that a shopping center limited to no more than three (3) buildings, each containing no more than three (3) retail stores with a combined area of not more than sixty thousand (60,000) square feet per building shall be permitted.**

- (H) No Prohibitions.

- (I) No Prohibitions.

8. No parking lots shall be located on the south side of any building constructed on a portion of the Real Estate that abuts or is adjacent to the south boundary line of the Real Estate.
9. Exterior lighting shall be constructed to meet specific building code requirements; provided, however, that all exterior lighting shall be mounted on the sides of buildings constructed on the Real Estate or shall consist of free standing lighting standards or poles that shall be no taller than thirty (30) feet. All lighting fixtures, whether on buildings, standards or poles shall be shielded so as to direct light downward at a low enough angle to eliminate any direct lighting onto or into the residential areas south of the Real Estate. Notwithstanding the foregoing, foundation lighting directed upon buildings or structures constructed on the Real Estate shall be permitted.
10. No free-standing advertising signs on pylons and no billboards of any type may be erected on the Real Estate. Any number of ground advertising signs, the tops of which shall not be higher than fifteen (15) feet above ground level of the Real Estate shall be permitted. All other advertising signs shall be attached to buildings on the Real Estate with the tops of any such advertising signs not to be higher than the buildings to which they are attached. No advertising signs may be constructed on the south side of any buildings or structures constructed on the Real Estate. No sign on the Real Estate shall have exposed neon lighting and no sign on the Real Estate that can be seen by owners and occupiers of real estate located south of the Real Estate shall be illuminated between the hours of 12:00 midnight and 6:00 a.m.
11. A buffer shall be constructed and installed along the south boundary of the Real Estate to screen the view of developments on the Real Estate by owners or occupiers of the residential real estate located south of the Real Estate as well as to restrict public access to and from the Real Estate and such adjacent residential real estate. Such buffer shall consist of either: (a) an earthen berm (hereinafter "Berm"), twenty-five (25) feet in width and rising to a height of four (4) feet above the ground level of the Real Estate, planted or sodded with grass and topped with bushes or shrubs; or (b) a decorative fence, wall or other structure which would reasonably restrict both view and access. The construction of such buffer and the planting or sodding of grass, if appropriate, shall be completed within six (6) months of the commencement of construction on the Real Estate. The planting of bushes or shrubs, if appropriate, shall be completed within one (1) year of the commencement of construction on the Real Estate.
12. In the event that Owner installs the Berm as described above, Owner agrees that no building or structure will be constructed on the Real Estate within fifteen (15) feet of the Berm. This restriction shall not apply in the event Owner restricts view and access utilizing a more substantial structure such as a decorative fence or wall.
13. The Berm and all landscaping on the Real Estate (including such bushes or shrubs on the Berm) shall be maintained in an aesthetically pleasing manner (including the prompt replacement of all diseased and dead bushes or shrubs) at the expense of the Owner.
14. Owner may install utilities on any part of the Real Estate; provided, however, that all utilities must be installed underground and along dedicated roadways or easements on the Real Estate.
15. The Real Estate shall be kept free from garbage, sewage, ashes, rubbish, bottles, cans, waste matter or other refuse. Trash, garbage or other debris accumulated by Owner shall be kept in sanitary containers, dumpsters, or incinerators, or other equipment for storage or disposal of such material, and shall be kept in a clean and sanitary condition, out of sight and in an enclosed area in such a manner as to avoid an unsightly appearance from adjacent residential lots. Structures

containing dumpsters must be constructed from the same material as the building with which the structure is associated, within functioning gates that completely and attractively hide said containers.

16. The sound emitting from outside speakers on the Real Estate shall be no louder than sound emitted by outside speakers associated with the drive-up window of a bank.
17. No business or component part of any business operated in any building on the Real Estate shall be open or accessible to the public and no parking lot sweepers shall be operated on the Real Estate between the hours of 12:00 midnight and 6:00 a.m.; provided, however, that any business operating on the Real Estate as a hotel, motel, community residential facility or similar facility may operate 24 hours per day.
18. All drainage plans must be approved as required by the Evansville City Engineer and the Vanderburgh County Drainage Board prior to issuance of permits.
19. All commercial vehicles used to deliver goods, materials, equipment or supplies (hereinafter "Loads") to businesses operating on the Real Estate shall be required to immediately unload their Loads and to depart the Real Estate immediately after completion of such unloading.
20. Term. The commitments and undertakings herein made and expressed shall terminate, expire and be of no further force or effect if the Real Estate should be rezoned due to the filing of some subsequent petition to amend the zoning classification of the Real Estate.
21. Effective Date. This Commitment shall be recorded in the office of the Recorder of Vanderburgh County, Indiana, and shall take effect upon the adoption of the zoning classification of the Real Estate from Residential to C-2 Zoning District.
22. Binding Effect; Enforcement; Attorneys' Fees. All commitments and undertakings herein expressed shall be binding on the Owner and the Owner's heirs, legal representatives, successors and assigns, and shall run in favor of the Area Plan Commission of Evansville-Vanderburgh County and all the owners of real estate lying within the radius of one (1) mile from the Real Estate herein described and shall be enforced by invoking any legal, equitable or special remedy, including specific performance, injunction or other equitable relief pursuant to the manner of enforcement as set forth in I.C. and 36-7-4-1015. If it is necessary to initiate administrative or judicial proceedings to enforce any such commitment or undertaking, the person or entity obtaining enforcement in such proceedings shall also recover its reasonable attorneys' fees and costs of suit from the undersigned.

The person executing this instrument on behalf of Owner and Petitioner represents and warrants that the execution and delivery of this instrument is duly has been duly authorized and shall be binding upon the same.

IN WITNESS WHEREOF, this Use and Development Commitment is hereby made and entered into this 25 day of February, 2016, for the purposes set forth herein.

J & K Investments, LLP

By: _____

John M. Dunn, Manager

"Petitioner"

STATE OF INDIANA)

) SS:

COUNTY OF VANDERBURGH)

Before me, a Notary Public in and for said County and State, personally appeared the within named John M. Dunn, as Manager of J & K Investments, LLP, and acknowledged the execution of the above and foregoing to be the voluntary act and deed of said company.

WITNESS my hand and seal this 25 day of February, 2016.



ALISHA BECK
Resident of Warrick County, IN
Commission Expires: January 30, 2021

Alisha Beck

Notary Public

Alisha Beck

Printed Name

My Commission Expires: _____

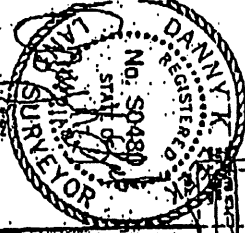
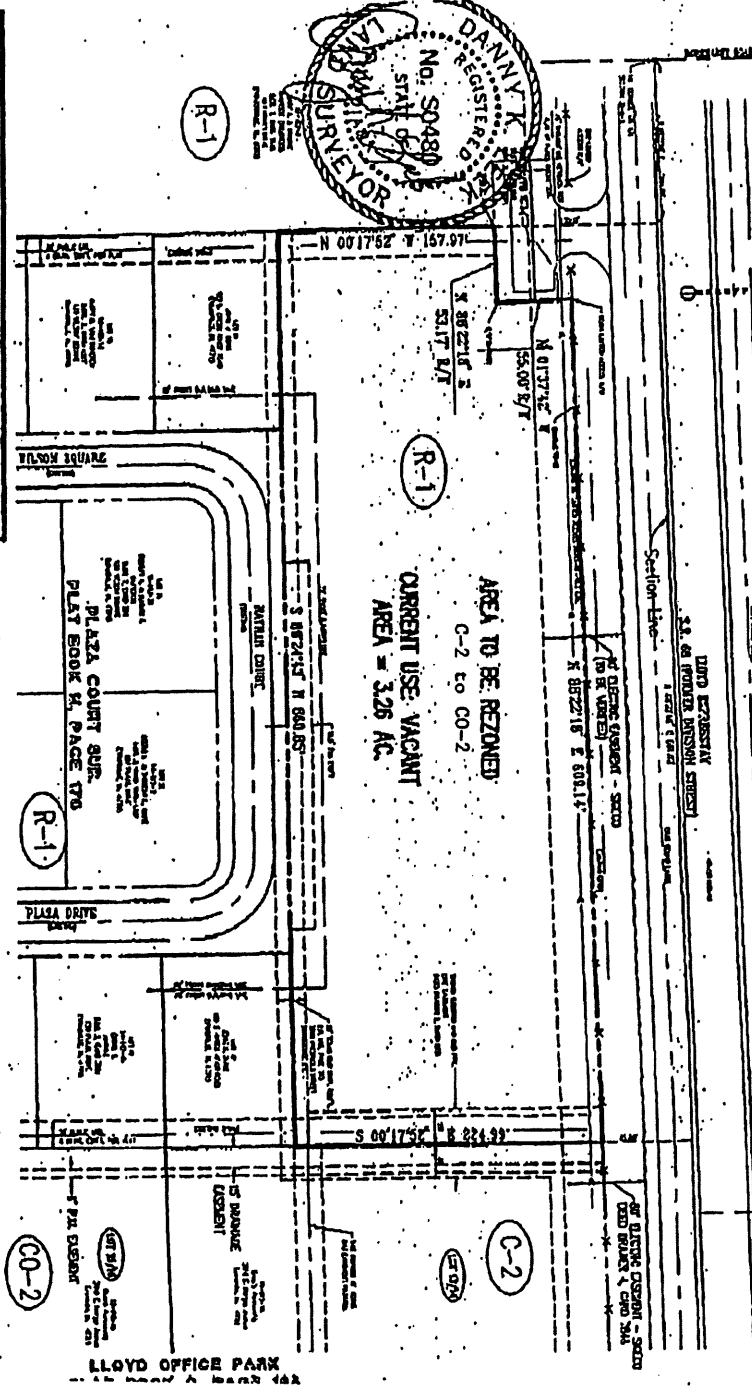
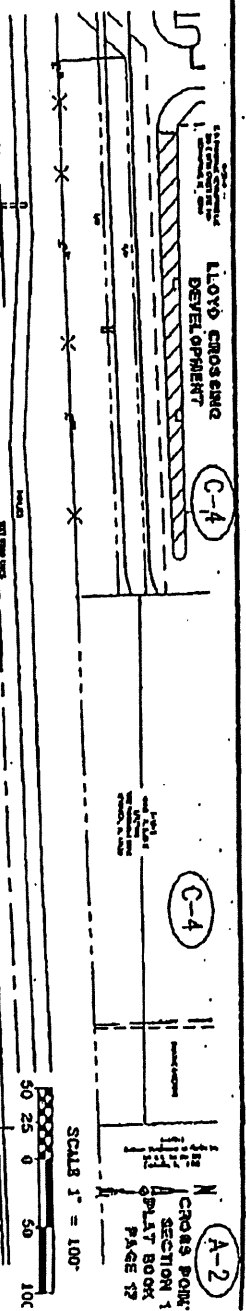
My County of Residence: _____

This Instrument was prepared by Shannon S. Frank, Kahn, Dees, Donovan & Kahn, LLP, 501 Main St., Suite 305, P.O. Box 3646, Evansville, Indiana 47735, Telephone (812) 423-3183

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. *Shannon S. Frank*

EXHIBIT A

Outlot A in Plaza Court, an Addition lying near the City of Evansville, as per plat thereof, recorded in Plat Book M, page 170, in the office of the Recorder of Vanderburgh County, Indiana.



Morley and Associates Inc.
 600 SE. SIXTH STREET/EVANSVILLE, IN, 47713
 PHONE: (812) 484-9385 FAX: (812) 484-2514

Proj. No.:	REZONE DWS	Date:	01/29/96	Ch. By:	KLEK	Drawn by:	LEV.
2872							

REZONING EXHIBIT PL

Abutting Owners
December 8, 2015

Eagle Crest Building, LLC
400 E. Sycamore Street
Evansville, IN 47713-2776
7100 Eagle Crest Blvd
82-07-30-013-216.015-027

David D. Dassell
114 Plaza Drive
Evansville, IN 47715
82-07-30-014-142.042-027

Daniel and Angela Barr
127 Plaza Drive
Evansville, IN 47715
82-07-30-014-142.031-027

Martin Nussmeyer
126 Wilson Square
Evansville, IN 47715-0369
82-07-30-014-142.021-027

Jason and Angela Willem
115 Wilson Square
Evansville, IN 47714
82-07-30-014-142.011-027

Target Corporation T-1481%
P.O. Box 9456
Minneapolis, MN 55440-9456
6625 E. Lloyd Expressway
82-07-30-017-162.019-027

Lloyd Crossing Shopping Center, LLC
600 E. 96th Street Suite 150
Indianapolis, IN 46240
Burkhardt & Lloyd Expressway
6636 E. Lloyd Expressway
82-07-19-017-168.009-027
82-07-19-013-233.001-027

Mini Storage Depot at East Indiana
3900 Edison Lakes Pkwy Suite 201
Mishawaka, IN 46545-3442
7100 E. Indiana Street
82-07-19-011-231.002-027

Chick-Fil-A Inc.
5200 Buffington
Atlanta, GA 30349-2998
7101 E. Indiana Street
82-07-19-011-231.001-027

New Private Restaurant Properties
5151 Glenwood Avenue
Raleigh, NC 27612
7201 E. Indiana Street
82-07-19-011-215.001-027

Plaza Parks Neighborhood Association
Attn: Jan Strickland
530 Kirkland Drive
Evansville, IN 47715

VERIFIED PETITION FOR REZONING

2015-46

-PC

ORDINANCE NO. R- 2016-3 AMENDEDCOUNCIL DISTRICT: 1st Ward; Dan McGuinnPETITIONER J & K Investments, LLPPHONE 812-471-9300ADDRESS 21 S.E. Third Street, Suite 100, Evansville, IndianaZIP CODE 47713OWNER OF RECORD J & K Investments, LLPPHONE 812-471-9300ADDRESS 21 S.E. Third Street, Suite 100, Evansville, IndianaZIP CODE 47713

1. Petition is hereby made for the amendment of the "Zoning Maps" of the Area Plan Commission of Evansville and Vanderburgh County, pursuant to the Indiana Code and the Municipal Code of Evansville.
2. Premises affected are on the South side of Lloyd Expressway a distance of 50+/- feet East (N.S.E.W.) of the corner formed by the intersection of Burkhardt Rd. and Lloyd Expressway.
Registered Neighborhood Association (if applicable) Plaza Parks

LEGAL DESCRIPTION:

SUBDIVISION See Attached

BLOCK _____

LOT NO. _____

(where applicable - if not in a subdivision, insert legal here or attach to ordinance)

3. The commonly known address is 6801 E. Lloyd Expressway
4. The real estate is located in the Zone District designated as CO-2
5. The requested change is to (Zone District) C-2 with Use and Development Commitment
6. Present existing land use is Vacant
7. The proposed land use is General Retail
8. Utilities provided: (check all that apply)
City Water ☒ Electric ☒ Gas ☒ Storm Sewer ☒
Sewer: Private _____ Public ☒ Septic ☒
9. All attachments are adopted by reference.
10. The owner, or attorney for the owner, hereby certifies that the owner of record shown above owns 50% or more of the area of the above described real estate. I affirm under the penalties for perjury that the foregoing representations are true.

(REQUIRED) Signatures:

DATE 2-25-16

(when signed)

PETITIONER _____

PRINTED NAME J & K Investments, LLPDATE 2-25-16

(when signed)

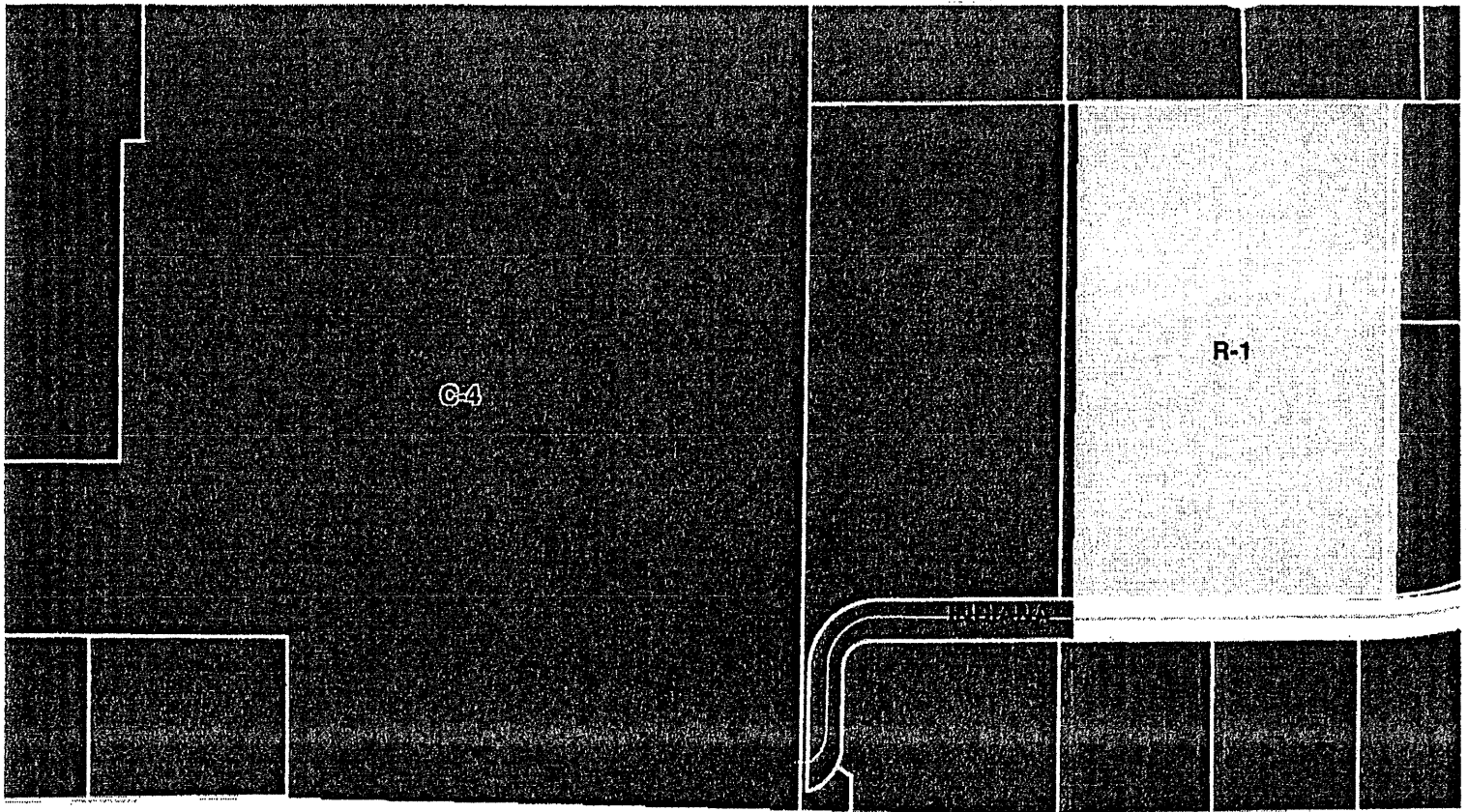
OWNER OF RECORD _____

PRINTED NAME J & K Investments, LLPREPRESENTATIVE FOR PETITIONER
(Optional)NAME Shannon S. Frank, Kahn Dees Donovan & Kahn, LLPADDRESS/ZIP PO Box 3646, Evansville, Indiana 47735PHONE 812-423-3183

EXHIBIT A

Outlot A in Plaza Court, an Addition lying near the City of Evansville, as per plat thereof, recorded in Plat Book M, page 170, in the office of the Recorder of Vanderburgh County, Indiana.

4810-8489-9115



LLOYD
LLOYD

REZONE C0-2 TO C-2 w/UDC

